

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ERIE COUNTY ENVIRONMENTAL
COALITION, PENNENVIRONMENT,
INC. and THE GAIA DEFENSE LEAGUE,
Plaintiffs

v.

MILLCREEK TOWNSHIP SEWER
AUTHORITY AND MILLCREEK
TOWNSHIP,
Defendants

CIVIL ACTION NO. 05-59 ERIE
ELECTRONICALLY FILED

JUDGE COHILL

AFFIDAVIT OF BRIAN P. McGRATH

COMMONWEALTH OF PENNSYLVANIA)

COUNTY OF ERIE)

ss:

I, BRIAN P. McGRATH, first being duly sworn on oath and under penalty of perjury,
hereby states as follows:

1. I am a Supervisor of Millcreek Township ("Millcreek") and was first elected a Supervisor of Millcreek Township Supervisor in 1994. There are three Supervisors in Millcreek. Millcreek is a political subdivision of the Commonwealth of Pennsylvania. Millcreek is the operator of the Millcreek sewer system that is owned by the Millcreek Township Sewer Authority ("MTSA").

2. On October 28, 2003, at a publicly noticed Supervisors' meeting, Millcreek approved the execution of the Consent Order and Agreement entered into between MTSA, Millcreek and the Pennsylvania Department of Environmental Protection ("Department") dated October 31, 2003 ("2003 COA").

3. Millcreek's approval of the 2003 COA was the subject of a newspaper article in the Erie Time-News, the City of Erie's only daily newspaper on October 29, 2003. A true and correct copy of the newspaper article is included in the Appendix to Motion for Summary Judgment at App. 681 - 682.

4. As part of the requirements under the 2003 COA, MTSA and Millcreek have made significant strides in their efforts to investigate and eliminate inflow and infiltration in the sewer system that is served by the Kearsarge pump station. In March 2004, MTSA and Millcreek passed new ordinances, resolutions and rules and regulations to enable them to better enforce against illegal connection to their sanitary sewer system.

5. On March 30, 2004, Millcreek passed Ordinance 2004-4. Ordinance 2004-4 strengthened the ability of MTSA and Millcreek to investigate and remove illegal connections.

6. A true and correct copy of Ordinance 2004-4 is included in the Appendix to Motion for Summary Judgment at App. 441 - 459.

7. In conjunction with Ordinance 2004-4, Millcreek also passed two resolutions: Resolution 2004-R-13 and Resolution 2004-R-14.

8. A true and correct copy of Resolution 2004-R-13 is included in the Appendix to Motion for Summary Judgment at App. 460 - 468.

9. A true and correct copy of Resolution 2004-R-14 is included in the Appendix to Motion for Summary Judgment at App. 469 - 470.


10. Resolution 2004-R-13 establishes a program to identify and terminate unlawful connections to the sanitary sewer system. The resolution sets forth the procedures to be followed for conducting inspections and for thereafter terminating any discovered illegal connections. In Resolution 2004-R-14, Millcreek formally adopted the Rules and Regulations Governing the Sanitary Sewer System ("Rules & Regulations"). Section VIII of the Rules and Regulations deals with the inspections and terminations of unlawful connections.

11. A true and correct copy of the Rules and Regulations is included in the Appendix to Motion for Summary Judgment at App. 471 - 525.

12. A true and correct copy of Ordinance 89-29 is included in the Appendix to Motion for Summary Judgment at App. 69 - 86.

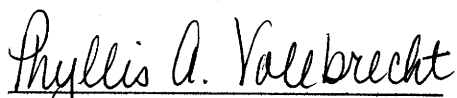
13. A true and correct copy of Ordinance 2002-23 is included in the Appendix to Motion for Summary Judgment at App. 425 - 440.

14. Millcreek Township owns property that is adjacent to the Kearsarge pump station. MTSA and Millcreek planned to use that adjacent property to construct the overflow retention tank required under the Special Study approved by the Department. The property had been donated to Millcreek, but it contained use restrictions that would prohibit the placement of the tank on that property. MTSA sought to have those restrictions lifted in Court, but due to the length of time needed to accomplish that through the Court system, MTSA acquired property adjacent to the Kearsarge pump station that was owned by a third party, which did not have use restrictions. Construction of the overflow retention tanks is planned to begin this summer.

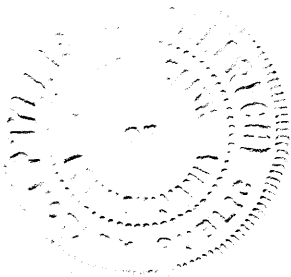


Brian P. McGrath

Sworn to and subscribed before me
this 29th day of March, 2006.



Notary Public



COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Phyllis A. Vollbrecht, Notary Public
Millcreek Twp., Erie County
My Commission Expires Jan. 21, 2010
Member, Pennsylvania Association of Notaries